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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Joint written submission by the Equality and Human Rights Commission of Great Britain, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission*

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Equality and Human Rights Commission of Great Britain, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission**, reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with A status accreditation from the Global Alliance of National Institutions for the Promotion and Protection of Human Rights.

** Reproduced in the annex as received, in the language of submission only.

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Annex

Statement on behalf of the Equality and Human Rights Commission of Great Britain, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission. For the panel discussion on promoting tolerance, inclusion, unity and respect for diversity in the context of combating racial discrimination.

Mr President

This is a statement on behalf of the Equality and Human Rights Commission of Great Britain, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission.

The United Kingdom has signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination, which includes obligations relating to hate crime.[1]

We remain seriously concerned about increases in incidences of racially motivated hate crime in the UK in recent years, in particular following the EU referendum of June 2016 and recent terror attacks in England.[2]

The National Police Chief's Council reported a 57 per cent increase in reports of hate crime in the aftermath of the EU referendum.[3] Race remains the most commonly recorded motivation for hate crime in 2016/17, at 78 per cent, and shows an increase of 27 per cent over the previous year.[4]

We are concerned that barriers to reporting and recording hate crime continue to exist across the UK. There are challenges with the existing legal framework, which has developed in a piecemeal fashion. The main provisions relied upon in legal proceedings in relation to online hate crime predate the era of mass social media use.

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[1] Article 4 of ICERD includes an obligation to 'declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof'.

[2] UN Committee on the Elimination of Racial Discrimination (2016) Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland. CERD/C/GBR/CO/21-23, page 4, para. 15. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/GBR/CO/21-23&Lang=En.

[3] National Police Chiefs' Council [NPCC]. 2016. *Hate crime is unacceptable in any circumstances say police*. Available at: http://news.npcc.police.uk/releases/hate-crime-is-unacceptable-in-any-circumstances-say-police.

[4] Home Office (2017), 'Hate Crime, England and Wales, 2016/17: Statistical Bulletin 17/17, 17 October 2017'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652136/hate-crime-1617-hosb1717.pdf.

We call on the UK Government: [5, 6, 7]

a) To undertake a full-scale review of the legislation on hate crime without further delay. We suggest that any review of the legislation includes provisions on aggravated offences and the enhanced sentencing system, to ensure consistency across different protected characteristics; [8, 9, 10]

We call on the UK and Scottish Governments:

b) To ensure the legislation gives full consideration to the right to freedom of expression in private electronic communications; [11]

c) To ensure that monitoring and data collection methods are consistent across the UK, to allow for comparative and chronological analysis;

d) To evaluate reporting and recording processes used by the police and other agencies, in consultation with local communities;

e) To implement a review of third-party reporting, to evaluate impactand sustainability, highlight geographical and thematic gaps and ensure consistency with police recording systems; [12] and

f) To ensure police refer all victims of hate crimes and incidents to relevant support services. Such services should be adequately funded.

Thank you Mr President.

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[5] The Equality and Human Rights Commission (2017) Race rights in the UK. Submission to the UN Committee on the Elimination of Racial Discrimination in accordance with the Committee's procedures to follow up on Concluding Observations EHRC. Available at: https://www.equalityhumanrights.com/sites/default/files/race_rights_in_the_uk_-_august_2017.pdf

[6] One Scotland. (2016), *Report of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion*. Available at: http://www.gov.scot/Resource/0050/00506074.pdf

[7] The Scottish Government has commissioned an independent review of hate crime legislation in Scotland. The review, which commenced on 30 January and will take up to a year to complete, is being led by Rt Hon Lord Bracadale.

[8] Sentencing Council, Approach to sentencing. Available at: https://www.sentencingcouncil.org.uk/explanatory-material/item/hate-crime/3-approach-to-sentencing/

[9] Law Commission (2014), *Hate crime: Should the current offences be extended?* Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316103/9781474104852_Print.pdf

[10] The Northern Ireland Human Rights Commission continues to advocate for a full implementation of its recommendations contained within its 2013 investigation into racist hate crime in Northern Ireland.Available at: http://www.nihrc.org/uploads/publications/103141_NIHRC_Racist_Hate_Crime_4_Combined_%282%29.pdf.

[11] Article 19 (2) of the International Covenant on Civil and Political Rights recognises that the right to freedom of expression is qualified, as per the following:
(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.
Article 10(2) of the European Convention on Human Rights places additional restrictions on freedom of speech, "…in the interests of …territorial integrity or public safety, for the prevention of disorder or crime, … for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

[12] The Scottish Government is looking at the value of third party reporting in the Lord Bracadale review mentioned in note 7.